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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE FERNANDO GOMEZ-MOREIRA,

Defendant.

CASE NO. 1:20-CR-00151-NONE-SKO

STIPULATION TO CONTINUE STATUS
CONFERENCE AND REGARDING
EXCLUDABLE TIME PERIODS UNDER SPEEDY
TRIAL ACT; FINDINGS AND ORDER

This case was previously scheduled for a status conference on March 17, 2021. On May 13, 2020, this Court issued General Order 618, which indefinitely continues the prior suspension of all jury trials in the Eastern District of California and the prior courthouse closures as set forth in General Order 617. These and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering and ends-of-justice continuance must set forth explicit findings on the record "either

orally or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through their counsels of record, hereby stipulate as follows.

1. This case was previously set for a status conference on March 17, 2021.
2. By this stipulation, the parties now move to continue the status conference until April 21, 2021, and to exclude time between March 17, 2021 and April 21, 2021, under Local Code T4.
3. The parties agree and stipulate, and request that the Court find the following:

1 a) The government has represented that the discovery associated with this case has
2 been either produced directly to counsel and/or made available for inspection and copying. In
3 addition, the government is working to produce shortly an additional recording, which it helped
4 counsel for defendant obtain upon request.

5 b) Counsel for defendant desires additional time to review discovery and consult
6 with his client about a possible resolution in this case.

7 c) Counsel for defendant believes that failure to grant the above-requested
8 continuance would deny him the reasonable time necessary for effective preparation, taking into
9 account the exercise of due diligence.

10 d) The government does not object to the continuance.

11 e) Based on the above-stated findings, the ends of justice served by continuing the
12 case as requested outweigh the interest of the public and the defendant in a trial within the
13 original date prescribed by the Speedy Trial Act.

14 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
15 et seq., within which trial must commence, the time period of March 17, 2021 to April 21, 2021,
16 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
17 because it results from a continuance granted by the Court at defendant's request on the basis of
18 the Court's finding that the ends of justice served by taking such action outweigh the best interest
19 of the public and the defendant in a speedy trial.

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4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: March 10, 2021

PHILLIP A. TALBERT
Acting United States Attorney

/s/ LAURA D. WITHERS
LAURA D. WITHERS
Assistant United States Attorney

Dated: March 10, 2021

/s/ Benjamin Gerson
BENJAMIN GERSON
Counsel for Defendant
JOSE FERNANDO GOMEZ-
MOREIRA

FINDINGS AND ORDER

IT IS SO ORDERED.

Dated: March 10, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE